

# **CORPORATE INTEGRITY AGREEMENT**

## **HIGHMARK INC.**

### **I. PARTIES**

This Corporate Integrity Agreement ("Agreement") is entered into between Highmark Inc., its present and future subsidiaries, related business entities, agents or any entity which Highmark may merge with or acquire (collectively "Highmark"), the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("DHHS"), and the Health Care Financing Administration ("HCFA").

### **II. PREAMBLE**

Highmark agrees to implement this Corporate Integrity Agreement (the "Agreement") to demonstrate that Highmark possesses the high degree of business honesty and integrity required in dealing with HCFA with respect to any Medicare Part A contract, Part B contract, Part C contract, any Medicare Health Maintenance Organization contract, any Medicare risk sharing contract or any other Medicare contract (collectively "Medicare contract") which Highmark enters into with HCFA. Highmark agrees to abide by and comply with the rules, regulations, and procedures set forth by HCFA and all other applicable Federal and State health care programs in carrying out its obligations under this Agreement.

### **III. DURATION OF THE AGREEMENT**

This Agreement shall remain in effect for five (5) years beginning with the effective date of the Agreement. It shall apply to all of Highmark's present Medicare contracts with HCFA, as well as

any Medicare contract which Highmark enters into with HCFA during the term of this Agreement.

#### **IV. CORPORATE INTEGRITY PROGRAM**

Highmark represents that it has, and, consistent with the terms of this Agreement, agrees to continue to maintain and implement written policies and procedures (the "Corporate Integrity Program") regarding its commitment to full and comprehensive compliance with its obligations under the Medicare contract and with all applicable published Federal and State health care statutes, regulations, and contract terms and conditions. The Corporate Integrity Policy shall be maintained and updated regularly so as to ensure that Highmark and each of its directors, officers, and employees with responsibilities for reporting its performance to HCFA under the Medicare contract conduct themselves with the honesty and integrity required of a Government contractor and that Highmark's performance of each of its Medicare contracts complies with all applicable statutes, regulations, and contract terms and conditions. Highmark's corporate integrity policy shall include, at a minimum, the following components:

##### **A. Compliance Officer and Compliance Committee**

1. Highmark has specifically designated an individual to serve as the Compliance Officer ("CO") for its Medicare contracts. The CO shall assume such duties and responsibilities as deemed necessary to fulfill the obligations undertaken in the Agreement. The CO is a senior official within Highmark and shall have direct access to the Chief Executive Officer and the Board of Directors.

2. Within ninety (90) days of the effective date of this Agreement, Highmark shall establish a Compliance Committee. The CO shall chair the Compliance Committee that shall also

include, at a minimum, the Chief Executive Officer, the Chief Financial Officer, and an outside member of the Board of Directors. Highmark may appoint such other persons to the Compliance Committee as it deems appropriate.

**B. Code of Business Ethics and Conduct**

1. Highmark represents that it has a written Code of Conduct. Within ninety (90) days of the effective date of this Agreement, Highmark shall develop a written Medicare Code of Business Ethics and Conduct ("Code"), and submit it to HCFA and OIG. The Code should be comprehensive, containing, at a minimum, policies and procedures relating to the performance of specific contract terms and accurate reporting of Highmark's performance to HCFA. Highmark shall review its current disciplinary guidelines and revise them as appropriate to comply with the terms of this Agreement. The revised disciplinary guidelines shall be incorporated into the Code.

2. Not later than fifteen (15) days following finalization of the Code, Highmark shall circulate copies to each of its directors, officers, and employees with responsibilities for providing or producing data, information or documents which may be reported to or reviewed by HCFA and those who are responsible for reporting to HCFA on Highmark's performance under the Medicare contract.

3. Within thirty (30) days of the circulation of the Code, unless for good cause the time needs to be extended, Highmark shall cause each of its directors, officers and employees who has responsibilities for providing or producing data, information or documents which may be reported to or reviewed by HCFA and those who are responsible for reporting to HCFA on Highmark's performance under the Medicare contracts to execute a certificate representing that he or she has read and understands the Code and agrees to abide by it.

4. Within fourteen (14) days of their employment, Highmark shall give a copy of the Code to any new director, officer, or employee who has responsibilities for providing or producing data, information or documents which may be reported to or reviewed by HCFA and those who are responsible for reporting to HCFA on Highmark's performance under the Medicare contract. Such new employee shall execute the certificate referenced in subparagraph 3 above.

5. Highmark shall maintain the certificates referenced in subparagraphs 3 and 4 in a central location, and shall make them available for inspection by HCFA and/or the OIG, or their duly recognized representative, upon reasonable notice.

6. Within ninety (90) days following the effective date of this Agreement, Highmark shall post, in areas visible to employees in each facility, a notice stating Highmark's commitment to compliance with all applicable Federal and State health care statutes, regulations and procedures; a statement that Highmark's Code is available to all employees; and that the CO is available to all employees.

7. On an annual basis, or more frequently if deemed necessary, the Board of Directors shall either amend or ratify the Code.

### **C. Training and Education**

1. Within ninety (90) days of the effective date of this Agreement, Highmark shall develop and institute an information and education program designed to ensure that all officers, directors, and employees of Highmark who have responsibilities for providing or producing data, information or documents which may be reported to or reviewed by HCFA and those who have responsibilities for reporting Highmark's performance to HCFA under the Medicare contract are aware of all statutes, regulations and agency directives relevant to their individual functions within

Highmark, as well as the standards of business conduct that such individuals are expected to follow and the consequences, both to the individuals and to Highmark that will ensue from any violation of these requirements.

2. This training and education program shall include at least two (2) hours of initial training regarding the elements of the Code and appropriate statutes, regulations, and program requirements dealing with health care fraud and abuse and their relation to the individuals' particular job functions.

3. Highmark will arrange for all new personnel with the above specified job responsibilities to participate in such training no later than thirty (30) days after they begin working. Until they have had the requisite training, such new personnel will work under the direct supervision of a person who has received such training.

4. The training and education program will also include a minimum of one (1) hour annually of follow-up training on the Code and the appropriate statutes, regulations and program requirements.

5. Copies of all training materials shall be made available to HCFA or OIG upon reasonable request.

#### **D. Dealings With Excluded, Sanctioned, Debarred, or Convicted Persons**

1. Highmark represents that it has and shall continue to maintain and implement a policy stating that Highmark shall not knowingly employ, with or without pay, or form a contract with, purchase from, or enter into a business relationship with, for the purpose of fulfilling any of its obligations under its Medicare contracts, any individual or entity that is (i) convicted of a criminal offense involving government business, (ii) listed by a federal agency as debarred, (iii) proposed for debarment or suspension or (iv) otherwise excluded from federal program participation.

2. In order to carry out this policy, Highmark shall make reasonable inquiry into the status of any current or potential employee or contractor. Such reasonable inquiry shall be made during the hiring process and shall include at least a review of the OIG's Cumulative Sanction Report (currently accessible, among other places, on the Internet at [HTTP://WWW.DHHS.GOV/PROGORG/OIG](http://WWW.DHHS.GOV/PROGORG/OIG)) and of the General Services Administration's List of Parties Excluded from Federal Procurement Programs (currently accessible, among other places, on the Internet at [WWW.ARNET.GOV/EPLS](http://WWW.ARNET.GOV/EPLS)).

3. Should a Highmark employee or contractor be charged with a criminal offense involving government business, or be proposed for debarment (see Federal Acquisition Regulation ("FAR") 9.406) or suspension (see FAR 9.407), Highmark shall, upon discovery of that fact immediately remove that employee or contractor from any aspect of its business which involves government contracts. Highmark may not reinstate such employee or contractor until the action giving rise to his/her removal is resolved in his or her favor.

4. Should a Highmark employee or contractor be convicted of any criminal offense relating to the obtaining or performance of any government contract, debarred (see FAR 9.406), or excluded from Federal health care program participation, Highmark shall, upon discovery of that fact, immediately terminate that person's employment or contractual relationship.

#### **E. Confidential Disclosure Program**

1. Highmark represents that it has and shall continue to maintain a toll-free telephone "hotline" and other procedures for employees and others to report suspected misconduct directly to the CO or his/her designee. The hotline number shall be posted in a prominent place accessible to each of its employees. To the fullest extent possible, Highmark will ensure the anonymity of any person who calls the hotline or otherwise reports suspected misconduct.

2. Highmark represents that it has and will continue to maintain a log of all hotline calls and other reports of misconduct received and follow-up action taken.

3. Highmark shall conduct a preliminary review, and if necessary, an internal investigation of any allegation of misconduct received from either the hotline or any other source. If Highmark has reasonable grounds to believe that such misconduct may constitute a violation of criminal or civil law or administrative regulation relating to its government contracts, or a material breach of its obligations under this Agreement, Highmark shall report the misconduct to HCFA and OIG within thirty (30) days of a determination that such violation or material breach occurred. Such report may be preliminary and subject to further investigation or review.

4. Based on the results of any investigation undertaken pursuant to subparagraphs 2 and 3 above, Highmark shall take such corrective action as is necessary to ensure Highmark's compliance with the provisions of the Agreement and all applicable statutes, regulations, and its government contracts. This corrective action shall include, when appropriate, Highmark's prompt reimbursement of any financial loss the misconduct has caused the Medicare program, state health care programs, or program beneficiaries.

#### **F. Independent Reviews**

1. Highmark will retain an independent review organization, such as an accounting firm, law firm, or consulting firm, to perform annual reviews. The independent review organization will have expertise in Medicare billing requirements and contractor obligations. The purpose of these reviews is to help ensure compliance with Highmark's written policies and procedures, the terms of this Agreement, the Settlement Agreement, and all applicable laws, regulations, and guidelines.

2. The independent reviews shall provide:

- a. An assessment of whether Highmark's policies, practices, and procedures comply with this Agreement;
  - b. An assessment of Highmark's adherence to HCFA instructions with respect to prepayment review of claims;
  - c. An assessment of Highmark's internal controls over its claims processing procedures to determine whether they are working effectively;
  - d. An assessment of the extent and propriety of Highmark's use of force codes in processing Part B claims;
  - e. An assessment of whether Highmark is properly paying Medicare Secondary Payor ("MSP") and is taking appropriate action to recover mistaken MSP payments;
  - f. An assessment of whether Highmark is implementing HCFA instructions for the screening of ESRD laboratory claims;
3. The independent review organization will report its findings promptly to Highmark, and Highmark will promptly take any necessary corrective actions identified during such reviews.
  4. The first such review will be completed one year from the date of effective date of this Agreement.
  5. Within 30 days of completion of each annual review, Highmark will send HHS-OIG a written report by the independent review organization detailing its findings and recommendations for corrective actions. The independent review organization's report will specify the reviewing methods used, such as the Generally Accepted Accounting Principles, and include the basis for any statistically valid sampling.

## **V. REPORTS**

In addition to any other reports required by HCFA, Highmark shall make the following reports to HCFA and the OIG pursuant to the terms of this Agreement:

### **A. Interim Report**

Within one hundred twenty (120) days of the effective date of the Agreement, Highmark shall submit a report (Interim Report) that demonstrates that Highmark has complied fully with the requirements contained in section IV of this Agreement. As part of this Interim Report, Highmark will submit the names and addresses of the Compliance Officer and the members of the Compliance Committee.

### **B. Annual Report**

1. The Compliance Officer shall make an Annual Report to HCFA and the OIG describing the measures Highmark has taken to implement and ensure compliance with the terms of the Agreement. Such report shall include the following:

a. In the first Annual Report, a copy of the document or documents that constitute Highmark's Code established pursuant to section IV of this Agreement as adopted by the Board of Directors and implemented by the Compliance Committee. In subsequent years Highmark shall report any amendments or revisions to the Code made during the year covered by that Annual Report.

b. A summary describing all training conducted pursuant to section IV.C of the Agreement, including the dates and attendance at such training sessions.

c. A summary describing each hotline call or other report of misconduct received by Highmark pursuant to its obligations under section IV.E of the Agreement, including

the status of any investigation Highmark has conducted of such hotline call or other report.

d. A report on any personnel or other actions taken pursuant to section IV.D of the Agreement.

e. A detailed accounting of those costs incurred in the year covered by the Annual Report which Highmark has determined are unallowable under the Settlement Agreement.

f. A detailed description of the findings made during the reviews and audits conducted pursuant to section IV.F of this Agreement relating to the year covered by the Annual Report.

g. A statement by the Chairman of the Board that the Board of Directors has verified that, to the best of its knowledge, the requirements of the Agreement have been met and that supporting documentation is available for inspection, and a statement by the CO that the Compliance Committee has made a similar verification.

h. The names of Highmark's officers, directors, and Compliance Committee members.

i. If applicable, a statement that no events identified in paragraphs a-e of this section occurred.

2. Highmark shall maintain and make available for inspection by HCFA or OIG those portions of the minutes of any meeting of Highmark's Board of Directors that reflect decisions of the Board and directions to management concerning matters in any way related to Highmark's Code or the Agreement.

3. The Annual Reports required by this section shall be submitted to HCFA and OIG thirty (30) days after the anniversary of the effective date of the Agreement.

### **C. Annual Risk Assessment Report**

HCFA requires contractors to perform annual risk assessments to evaluate their internal control structures and systems. The annual risk assessment review shall be performed pursuant to protocol provided to Highmark by HCFA. Following the annual risk assessment review, Highmark must certify that it is in compliance with the requirements of the Federal Managers' Financial Integrity Act and the Chief Financial Officers Act. Highmark will provide to HCFA and OIG, on an annual basis, a copy of the risk assessment report and certification statement no later than thirty (30) days following the completion of the report.

### **D. Other Reports**

Highmark shall also be required to submit to HCFA and the OIG, within fifteen (15) days of the date Highmark becomes aware of the occurrence of the relevant event, the following additional reports, if applicable:

1. A report on the initiation of any criminal or civil investigation by any governmental entity regarding Highmark's performance of any of its contracts with the Government, or involving an allegation that Highmark has committed a crime or fraud, initiated during the term of the Agreement, including a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding;

2. A report on the initiation of any legal action brought by any governmental entity which alleges facts that, if true, would reflect adversely on the business honesty and integrity of Highmark; and

3. A report that summarizes the outcome of the investigation or legal action and corrective action undertaken by Highmark to correct any problem identified by the investigation or legal action.

## **VI. GOVERNMENT RIGHT TO INSPECTION, AUDIT AND INTERVIEW**

### **A. Right to Inspect**

In addition to any other rights that HCFA and OIG may have by statute, regulation, or contract, HCFA and OIG or their duly authorized representatives may examine Highmark's books, records, and other documents for the purpose of verifying or evaluating (1) Highmark's compliance with the terms of the Agreement, (2) Highmark's compliance with the terms, requirements and obligations under its Medicare contract(s), and (3) Highmark's compliance with Federal procurement policies as set forth in the Federal Acquisition Regulation and other authoritative guides. Highmark shall make the materials described in this section available at all reasonable times for examination, audit or reproduction.

### **B. Right to Interview**

HCFA or OIG or their duly authorized representatives may interview any Highmark officer or employee who consents to be interviewed at the employee's place of business during normal business hours or at such other place and time as they may mutually agree upon. HCFA or OIG will inform employees that they may elect to be interviewed with or without a representative of Highmark present. Highmark agrees to assist HCFA and OIG in contacting and arranging interviews with such employees upon request.

## **VII. BREACH AND DEFAULT PROVISIONS**

Highmark's compliance with the terms and conditions in the Agreement shall constitute an element of Highmark's present responsibility with regard to participation in federal health care programs. Full and timely compliance by Highmark shall be expected throughout the duration of the Agreement with respect to all of the obligations herein agreed to by Highmark.

### **A. Stipulated Penalties**

As a contractual remedy, OIG and Highmark agree that failure to comply with certain obligations set forth in the Agreement may lead to the imposition of the following monetary penalties (hereinafter referred to as "stipulated penalties").

1. A stipulated penalty of \$2,500 for each day Highmark fails to comply with any of the following, which stipulated penalty shall begin to accrue one day after the date the obligation becomes due unless OIG grants an extension:

- a. failure to submit the complete Annual Report by the due date of the applicable year as established by section V of the Agreement;
- b. failure to maintain a Compliance Officer within ninety (90) days of the effective date of the Agreement;
- c. failure to appoint a Compliance Committee within ninety (90) days of the date of effective date of the Agreement;
- d. failure to make available to all employees a toll-free telephone line (or Hotline) within timelines set forth in section IV.E of the Agreement;
- e. failure to provide a copy of the annual risk assessment report to OIG and HCFA by the due date established in section V.C of the Agreement.

2. A stipulated penalty of \$2,500 for each day Highmark fails to demonstrate in its Annual Report that it has complied with this Agreement by having fully in force during the term of the Agreement any of the following, which stipulated penalty shall begin to accrue no earlier than the date of Highmark's receipt of OIG's notice to Highmark of its noncompliance, or as otherwise indicated in the OIG notice in accordance with section VII.B below:

- a. the Code adopted pursuant to section IV.B of the Agreement;
- b. the Compliance Committee and the Compliance Officer, discharging their respective duties, as required under section IV.A of the Agreement;
- c. the Education and Information Program required under section IV.C of the Agreement;
- d. the Confidential Disclosure Program required under section IV. E of the Agreement.

3. A stipulated penalty of \$2,500 for each day Highmark fails to grant access to the information or documentation necessary to exercise the OIG's or HCFA's inspection, audit and interview rights set forth in section VI of the Agreement, which stipulated penalty shall begin to accrue no earlier than the date of Highmark's receipt of OIG's notice of noncompliance or as otherwise indicated in the OIG notice in accordance with section VII.B below.

4. A stipulated penalty of \$1,500 for each day Highmark employs an individual after that individual has been listed by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)). This stipulated penalty shall

not be demanded if Highmark can show it has made a reasonable inquiry as to the current or potential status of the employee or consultant engaged, as described in section IV.D of the Agreement. This penalty shall begin to accrue no earlier than the date of Highmark's receipt of OIG's notice of its noncompliance, or as otherwise indicated in the OIG notice in accordance with section VII.B below.

5. A stipulated penalty of \$1,000 for each day Highmark fails to comply with any other requirement in this Agreement, and which is not covered by subparagraphs 1, 2, 3 and 4 of paragraph VII. A. of the Agreement. This penalty shall begin to accrue no earlier than the date of Highmark's receipt of OIG's notice of its noncompliance, or as otherwise indicated in the OIG notice in accordance with paragraph VII. B below.

#### **B. Payment of Stipulated Penalties**

Upon finding that Highmark has failed to comply with any of the above-enumerated obligations, OIG shall notify Highmark by certified mail of: (i) Highmark's failure to comply; and (ii) OIG's exercise of its contractual right to demand payment of the stipulated penalties payable under the Agreement (this notification is hereinafter referred to as the "Demand Letter"). The applicable stipulated penalties shall begin to accrue on the date stated in the Demand Letter.

Within ten (10) days of receipt of the Demand Letter, unless OIG grants an extension of time, Highmark shall either: (i) cure the breach to the OIG's satisfaction and pay the applicable stipulated penalties; or (ii) request a hearing before a DHHS administrative law judge ("ALJ") to dispute the OIG's determination of noncompliance, pursuant to the agreed upon dispute resolution provisions set forth in paragraph VII. D. of the Agreement.

Payment of the stipulated penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OCIG at the address set forth in paragraph XIII. of the Agreement.

These provisions for payment of stipulated penalties shall not affect or otherwise set a standard for the OIG's determination that Highmark has materially breached the Agreement, which decision shall be made at the OIG's discretion and governed by the provisions in paragraph VII. C. of the Agreement.

### **C. Remedies for Material Breach**

If Highmark engages in conduct that OIG considers to be a material breach of the Agreement, OIG may seek exclusion of Highmark from participation in the Medicare, Medicaid and any other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). OIG shall notify Highmark of the alleged material breach by certified mail and of its intent to seek exclusion as a result thereof (this letter shall be referred to hereinafter as the "Intent to Exclude Letter"). Highmark shall have thirty-five (35) days from the date of the letter to respond by notifying the OIG in writing of its intent either to:

1. cure the alleged material breach; or
2. demonstrate to the OIG's satisfaction that: (a) Highmark is in full compliance with the Agreement; or (b) the material breach cannot be cured within the thirty- five (35) day period, but that Highmark has begun to take action to cure the material breach, that Highmark will pursue such action with due diligence, and that Highmark will give the OIG a timetable for curing the material breach.

If, at the conclusion of the thirty-five (35) day period (or other specific period as subsequently agreed by OIG and Highmark), Highmark fails to cure the material breach to OIG's satisfaction or otherwise fails to demonstrate either one of the requirements in provision 2 above, OIG will implement the proposed exclusion of Highmark from participation in the Medicare, Medicaid and any other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Contemporaneous with its determination, OIG will notify Highmark in writing of the proposed exclusion (this letter shall be referred to hereinafter as the "Exclusion Letter"). The exclusion shall take effect within ten (10) days of the date of the Exclusion Letter unless Highmark disputes the OIG's determination in accordance with the agreed upon dispute resolution provisions set forth in section VII.D.2 below. The exclusion shall have national effect and will also apply to all other federal procurement and non-procurement programs.

For purposes of this paragraph, a "material breach" shall mean: (i) a failure to meet an obligation under the Agreement that has a material impact on the Medicare, Medicaid or other federal health care programs; (ii) a failure to report a violation of one of its obligations under its Medicare contract and take corrective action; (iii) repeated or flagrant violations of the obligations under the Agreement, including, but not limited to, the obligations addressed in paragraph VII. A. of the Agreement; or (iv) failure to respond to a Demand Letter concerning the payment of stipulated penalties in accordance with paragraph VII. B. above.

In connection with the OIG's determination to exclude Highmark pursuant to this provision, Highmark shall have the right to dispute the OIG's determination in accordance with the agreed upon dispute resolution provisions set forth in section VII. D. below.

#### **D. Dispute Resolution**

Upon OIG's delivery to Highmark of its Demand Letter or of its Exclusion Letter, and as an agreed upon contractual remedy for the resolution of disputes arising under the obligations in the Agreement, Highmark shall be afforded review rights comparable to those provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. § 1005 as if they applied to the stipulated penalties or exclusion sought pursuant to this Agreement. Specifically, the OIG's determination to demand payment of stipulated penalties or to seek exclusion shall be subject to review by an DHHS administrative law judge in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21.

##### **1. Stipulated Penalty Dispute Resolution**

a. Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for stipulated penalties under this paragraph shall be: (i) whether Highmark was in full and timely compliance with the obligations in the Agreement for which OIG demands payment; (ii) whether Highmark failed to cure; and (iii) the period of noncompliance. Highmark shall have the burden of proving that it was in full and timely compliance and the steps taken to effect the cure, if any. The OIG shall have the burden of proving Highmark's failure to cure. For purposes of paying stipulated penalties under the Agreement, and if Highmark chooses to seek review in lieu of curing the breach and paying the stipulated penalties, as set forth above, the administrative law judge's decision shall give rise to Highmark's obligation to pay. Thus, payment will be due twenty (20) days from the day the administrative law judge's decision is mailed. Within thirty (30) days of the administrative law judge's decision, Highmark may appeal the administrative law judge's decision to the

Departmental Appeals Board (DAB). Highmark shall have the right to seek judicial review of the DAB's decision.

## **2. Exclusion Dispute Resolution**

a. Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a breach of the Agreement shall be: (i) whether Highmark was in material breach of one or more of its obligations under the Agreement; (ii) whether such breach was continuing on the date of the Intent to Exclude Letter; and (iii) whether Highmark failed to cure the material breach or otherwise failed to demonstrate either one of the requirements in section VII.C above.. For purposes of the exclusion herein agreed to, in the event of breach of the Agreement, the administrative law judge's decision shall be deemed to make the exclusion effective, at which time the OIG may proceed with its exclusion of Highmark, if the administrative law judge finds in favor of the OIG.

b. With respect to a proceeding to exclude, Highmark may, within thirty (30) days of the administrative law judge's decision, appeal the decision to the DAB pursuant to procedures consistent with 42 C.F.R. §1005.21. Highmark shall have the right to seek judicial review of the DAB's decision.

## **VIII. PRIVILEGES AND DISCLOSURES**

Nothing in this Agreement shall constitute a waiver of the attorney-client privilege or the attorney work product doctrine, or shall require Highmark to waive such privileges and protections. Subject to DHHS' Freedom of Information Regulations, set forth in 45 C.F.R. Part 5, OIG shall make a reasonable effort to notify Highmark prior to any release by OIG of

information submitted by Highmark pursuant to its obligations under this Agreement and identified upon submission as trade secrets or privileged or confidential commercial or financial information within the meaning of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4) and DHHS' Freedom of Information Regulations, 45 C.F.R. § 5.65. Highmark will refrain from identifying any information as trade secrets or privileged or confidential commercial or financial information that does not meet the criteria for exemption from disclosure under FOIA.

### **IX. ADDRESSES**

All reports, notices or other information required by this Agreement shall be in writing and delivered or mailed, by registered or certified mail, postage prepaid, as follows:

**A. To OIG :** Office of Counsel to the Inspector General  
Civil Recoveries Branch - Compliance Unit  
Office of Inspector General  
Department of Health and Human Services  
330 Independence Avenue, SW.  
Room 5527, Cohen Building  
Washington, D.C. 20201-0001  
Tel. 202.619.2078  
Fax. 202.205.0604

**B. To HCFA:** Gary Kavanagh, Director  
Medicare Contractor Management Group  
Health Care Financing Administration  
Mail Stop:  
7500 Security Boulevard  
Baltimore, Maryland  
Tel. 410.786.8050  
Fax. 410.786.0466

C.     **To Highmark:**   George A. Welsh, Esq.  
                              Corporate Compliance Officer  
                              Highmark Inc.  
                              1800 Camp Hill, PA 19011  
                              Tel. 717.763.3445  
                              Fax. 717.763.3323

or to such other addressee as any party may have designated in writing to other parties.

#### **X. NO THIRD-PARTY BENEFICIARIES**

This Agreement is intended to be solely for the benefit of the United States and Highmark and its affiliates, divisions, subsidiaries, successors, assigns, and licensees. By this instrument, the parties hereto do not intend to create a benefit for any other party or entity, and do not waive, compromise, or release their claims or causes of action against any other person or entity.

#### **XI. EFFECTIVE AND BINDING AGREEMENT**

Consistent with the provisions in the settlement agreement pursuant to which this Agreement is entered, and into which this Agreement is incorporated, Highmark, HCFA and OIG agree as follows:

A. This Agreement shall be binding on the successors, assigns and transferees of Highmark, including any entities which Highmark may merge with or acquire;

B. The effective date of this Agreement is the date the last party signs the Agreement;

C. Any modifications to this Agreement shall be made with the prior written consent of the parties to this Agreement; and

D. The undersigned Highmark signatory represents and warrants that he is authorized to execute this Agreement. The undersigned HCFA and OIG signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

HIGHMARK INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

John S. Brouse  
President and Chief Executive Officer

By: \_\_\_\_\_

Date: \_\_\_\_\_

W. Jay DeVecchio  
Kathleen E. Karelis  
Counsel for Highmark Inc.

HEALTH CARE FINANCING ADMINISTRATION

By: \_\_\_\_\_

Date: \_\_\_\_\_

Elizabeth Cusick  
Chief Financial Officer

By: \_\_\_\_\_

Date: \_\_\_\_\_

Carol Cronin, Director  
Center for Beneficiary Services

OFFICE OF INSPECTOR GENERAL  
UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

By: \_\_\_\_\_

Date: 8/13/98

Lewis Morris  
Assistant Inspector General

08/12/98 WED 10:43 AM 127.102.100.1

D. The undersigned Highmark signatory represents and warrants that he is authorized to execute this Agreement. The undersigned HCFA and OIG signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

**HIGHMARK INC.**

By: \_\_\_\_\_

John S. Brouse  
President and Chief Executive Officer

Date: \_\_\_\_\_

August 11, 1998

By: \_\_\_\_\_

W. Jay DeVecchio  
Kathleen E. Karelis  
Counsel for Highmark Inc.

Date: \_\_\_\_\_

8/12/98

**HEALTH CARE FINANCING ADMINISTRATION**

By: \_\_\_\_\_

Elizabeth Cusick  
Chief Financial Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_

Carol Cronin, Director  
Center for Beneficiary Services

Date: \_\_\_\_\_

**OFFICE OF INSPECTOR GENERAL  
UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES**

By: \_\_\_\_\_

Lewis Morris  
Assistant Inspector General

Date: \_\_\_\_\_

D. The undersigned Highmark signatory represents and warrants that he is authorized to execute this Agreement. The undersigned HCFA and OIG signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

HIGHMARK INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

John S. Brouse  
President and Chief Executive Officer

By: \_\_\_\_\_

Date: \_\_\_\_\_

W. Jay DeVecchio  
Kathleen E. Karelis  
Counsel for Highmark Inc.

HEALTH CARE FINANCING ADMINISTRATION

By:  \_\_\_\_\_

Date: 9/2/98

Elizabeth Cusick  
Chief Financial Officer

By: \_\_\_\_\_

Date: \_\_\_\_\_

Carol Cronin, Director  
Center for Beneficiary Services

OFFICE OF INSPECTOR GENERAL  
UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

By:  \_\_\_\_\_

Date: 8/13/98

Lewis Morris  
Assistant Inspector General

D. The undersigned Highmark signatory represents and warrants that he is authorized to execute this Agreement. The undersigned HCFA and OIG signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

HIGHMARK INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

John S. Brouse  
President and Chief Executive Officer

By: \_\_\_\_\_

Date: \_\_\_\_\_

W. Jay DeVecchio  
Kathleen E. Karelis  
Counsel for Highmark Inc.

HEALTH CARE FINANCING ADMINISTRATION

By: \_\_\_\_\_

Date: \_\_\_\_\_

Elizabeth Cusick  
Chief Financial Officer

By: 

Date: 9/1/98

Carol Cronin, Director  
Center for Beneficiary Services

OFFICE OF INSPECTOR GENERAL  
UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

By: 

Date: 8/13/98

Lewis Morris  
Assistant Inspector General